

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRUCE TONEY,

Plaintiff,

v.

Case No. 05-CV-74249-DT

CITY OF DETROIT et al.,

Defendants.

ORDER SETTING BRIEFING SCHEDULE

On June 5, 2006, the court conducted a status conference, on the record, in the above-captioned matter. During the conference, the parties discussed the threshold issues which are before the court, and the manner in which the court should resolve them. Specifically, on December 21, 2005 Nonparty Ernst & Associates filed a "Motion to Enforce Settlement Agreement," which was amended on December 23, 2005. Thereafter, Defendant City of Detroit filed a concurrence in Ernst's motion, which the court interpreted as an additional motion to enforce the settlement agreement and, specifically, the purported release contained within the settlement agreement (the "release"). (See 1/10/06 Concurrence; 3/10/06 Order.)

In the court's March 10, 2006 order, the court noted "that there was no dispute that Plaintiff signed a settlement agreement and release which, if enforced, would bar the instant action." (3/10/06 Order at 1.) Nonetheless, the court denied Defendant's motion without prejudice to allow the parties time to conduct discovery targeted at the enforceability of the release. (*Id.*) Since that time, the issues have been re-defined. As

discussed during the June 5, 2006 status conference, it now appears that the following issues may be to some extent disputed:

- (1) Whether the release, *assuming its validity and enforceability*, would constitute a complete bar to the instant litigation;
- (2) Whether a meeting of the minds occurred with respect to the material terms of the release;
- (3) Whether Plaintiff possessed the mental capacity to bind himself to the release; and
- (4) Whether the release was both procedurally and substantively unconscionable.

The court will allow the parties an opportunity to present their arguments with respect to these four issues, which should include not only the application of the relevant facts to the appropriate standards of law but also the identification of who bears the burden of proof with respect to each issue and, additionally, whether each issue should be determined by the court or by a jury. Accordingly,

IT IS ORDERED that Defendant shall file its brief, addressing the issues outlined above and limited to twenty-five pages on or before **June 30, 2006**. Plaintiff shall file its response brief, also limited to twenty-five pages, on or before **July 7, 2006**. In the meantime, the limited bench trial scheduled for **June 26, 2006** is ADJOURNED until further order of the court.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 6, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 6, 2006, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522
